

**REGULATIONS ADOPTED BY
THE LUNENBURG CONSERVATION COMMISSION
PURSUANT TO LUNENBURG’S BYLAW FOR GENERAL WETLANDS
PROTECTION, ARTICLE XXI**

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PROTECTION, ARTICLE XXI**

1.0 PURPOSE

These regulations are promulgated by the Lunenburg Conservation Commission, hereafter referred to as the "Commission", pursuant to the authority granted to it under the Town of Lunenburg, hereafter referred to as the "Town", and its General Bylaw for Wetlands Protection, here after referred to as the "Bylaw". These regulations shall complement the Bylaw and shall have the force of law upon their effective date.

The purpose of these regulations is to aid in the consistent and effective implementation of the Bylaw by establishing uniform procedures and standards by which the Commission may carry out its responsibilities under the Bylaw.

Wetlands and wetland buffer zones contribute to a number of public interests and values and are therefore protected. These interests and values include, but are not limited to, the following: public and/or private water supply, groundwater protection, surface water protection, flood control, erosion and sedimentation control, storm damage prevention, water pollution prevention, fisheries, freshwater shellfish, protection of endangered and/or threatened species, and wildlife and wildlife habitat.

2.0 JURISDICTION

In accordance with the above Purpose, no person shall remove, fill, dredge, discharge into, or otherwise alter any wetland resource area or buffer zone resource area of the Town of Lunenburg as defined herein without an Order of Conditions or a Determination of Applicability from the Town of Lunenburg Conservation Commission as provided by the Bylaw and these regulations.

Wetland, no-disturbance and buffer zone resource areas protected under the Bylaw include:

- (1) Any vegetated wetland (marsh, swamp, wet meadow, bog, etc.)
- (2) Any river or stream (intermittent or perennial)
- (3) Any lake or pond
- (4) Any bank of the resource areas identified above
- (5) Any vernal pool or pool of water having vernal pool properties or characteristics
- (6) All lands within 100 feet of the wetland resource areas identified above, called the buffer zone resource area.
- (7) Any land subject to flooding or isolated land subject to flooding
- (8) All lands within 200 feet of a perennial river or stream
- (9) Land under any of the resource areas identified in 2.(1) through (8) above

3.0 DEFINITIONS

ACTIVITY Any form of draining, dumping, dredging, damming, discharging, excavating, filling or grading; the erection, reconstruction, or expansion of any buildings or structures, the driving of pilings, the construction or improvement of roads and other ways; the changing of run-off characteristics, the intercepting or diverging of ground or surface water; the installation of drainage, sewage and other water systems; the discharging of pollutants; the destruction of plant life; and any other changing of the physical characteristics of an area.

ALTER To change the condition of an Area Subject to Protection under the Bylaw. Examples of alterations include but are not limited to: changes in drainage or water table levels, the destruction of vegetation, the changing of water temperature, biochemical oxygen supply or any other other characteristics of the receiving water. See Section 9 of the Bylaw.

APPLICANT shall mean any person who files a Determination of Applicability or Notice of Intent or on whose behalf said forms are filed.

BANK “Bank” is the portion of the land surface that normally abuts and confines a water body such as a creek, brook, stream, river, pond or lake as defined in the Massachusetts Wetlands Protection Act (M.G.L. Ch. 131, s. 40) and regulations at 310 CMR 10.00. A bank may be partially or totally vegetated, or comprised of exposed soil, gravel or stone.

BORDERING LAND SUBJECT TO FLOODING shall mean land within the 100 year flood plain, as mapped by the Federal Emergency Management Agency. This area is presumed significant to flood control and storm damage protection.

BORDERING VEGETATED WETLANDS (BVW) Bogs, swamps, marshes, and wet meadows that border on water bodies as defined in the Wetlands Protection Act regulations (310 Code of Massachusetts Regulations 10.55) . The regulations define BVWs as areas where the soils are saturated or inundated such that they support plants that are adapted to periodically wet conditions.

BUFFER ZONE shall mean that area of land extending 100 feet horizontally outward from the boundary of any area specified in Section 1.3 above. Per Section 2 of the Bylaw the Buffer Zone is a Resource Area. The no-build and no-touch zones are within the buffer zone.

BYLAW shall mean the Town of Lunenburg Wetlands Protection Bylaw.

CERTIFICATE OF COMPLIANCE A written determination by the Conservation Commission that work or a portion thereof has been completed in accordance with the Order of Conditions.

CONDITIONS shall mean ORDER OF CONDITIONS, those requirements set forth in a written Order issued by the Conservation Commission for the purpose of permitting, regulating or prohibiting any activity that alters an Area Subject to Protection under the Bylaw.

CONSERVATION COMMISSION “Commission” shall mean the Lunenburg Conservation Commission, that body of members lawfully appointed pursuant to M.G.L. Chapter 40, Section

8c, for the purposes of administering and enforcing the Wetlands Protection Act, M.G.L. Chapter 131, Section 40, and the Town of Lunenburg Wetland Protection Bylaw.

CREEK shall mean any small stream or any intermittent tributary to any brook, river or stream.

CUMULATIVE ADVERSE EFFECT shall mean an effect on a wetland or buffer resource area(s) that is significant when considered in combination with other activities that have occurred, are occurring simultaneously or that are reasonably likely to occur within that resource area(s), whether such other activities have occurred or are contemplated as a separate phase of the same project or activities, or as a result of unrelated projects or activities.

DATE OF ISSUANCE shall mean the date an Order is mailed, as evidenced by the postmark or the date it is hand delivered.

DATE OF RECEIPT shall mean the date of delivery to an office, Town Clerk, or usual place of business by certified mail or hand delivery.

DETERMINATION OF APPLICABILITY “Determination of Applicability” shall mean any review and written finding by the Conservation Commission as to whether a site or the work proposed thereon is subject to the jurisdiction of the Bylaw.

DREDGE To deepen, widen or excavate under any freshwater wetland or water body, either temporarily or permanently.

EXTENSION PERMIT A written extension of time within authorized work shall be completed.

FILL To deposit any material so as to raise an elevation temporarily or permanently.

FLOOD CONTROL shall mean the prevention or reduction of flooding and/or flood damage.

FLOODING shall be defined as a local and temporary inundation of water or a rise in the surface of a body of water such that it covers land not usually underwater.

GROUNDWATER shall mean water below the earth's surface in the zone of saturation.

LAKE shall mean any open body of fresh water with a surface area of 10 acres or more, and shall include great ponds.

LIKE ACTIVITY shall mean any activity similar in nature, purpose and extent as that activity currently occurring on the site of the proposed work.

LIKE STRUCTURE shall mean any structure similar in design or use currently located on the site of the proposed work.

MAJORITY shall mean more than half of the members of the Conservation Commission then in office, a quorum.

NO BUILD ZONE shall mean that within 50 feet of a resource area no new structures, retaining walls or impervious surfaces are allowed.

NO DISTURBANCE AKA No-Touch ZONE shall mean that within 30 feet of a resource area no alteration or work is allowed.

NOTICE OF INTENT is the written notice filed by any person intending to alter an area subject to protection under the bylaw.

ORDER shall mean ORDER of CONDITIONS.

ORDER OF CONDITIONS is the document issued by the Conservation Commission containing conditions which regulate or prohibit activity.

PERSON any individual, group of individuals, association, partnership, corporation, or business organization, trust or estate, the Commonwealth, or any political subdivision thereof, administrative agency, public or quasipublic corporation or body, or any other legal entity or its legal representatives, agents or assigns

PLANS shall mean such data, maps, engineering drawings, calculations, specifications, schedules and other materials deemed necessary by the Commission to describe the site and/or the work, to determine the applicability of the Bylaw or to determine the impact of the proposed work upon the interests of the Bylaw.

POND shall mean any open body of water, either naturally occurring or man-made by impoundment, with a surface area of at least 10,000 square feet, and which is never without standing water due to natural causes except during periods of extended drought.

PRIVATE WATER SUPPLY shall mean any source or volume of surface or groundwater demonstrated to be in any private use or demonstrated to have a potential for private use.

PROTECTED RESOURCE AREA shall mean any bank, freshwater wetland, marsh, bog, wet meadow, swamp, creek, river, stream, pond, or lake or any land under said waters, or any land subject to flooding or inundation whether or not bordering a surface water body, or any land bordering thereon, as defined in the Jurisdiction section above, and including the no-disturbance and buffer zones.

PUBLIC WATER SUPPLY shall mean any source or volume of surface or groundwater demonstrated to be in public use or approved for water supply pursuant to M.G.L. Chapter 111, Section 160 by the Division of Water Supply of the Department of Environmental Protection or shown to have a potential for public use.

QUORUM shall mean more than half of the members of the Conservation Commission then in office.

REMOVE shall mean the act or process of taking away or moving any type of materials thereby changing the land elevation or topography, either temporarily or permanently.

REPLACEMENT shall mean to put back in proper place, or to provide an equivalent to the satisfaction of the Commission.

RIVER shall mean a natural stream of water that empties into any lake, pond or other river or stream, and has a continuous or intermittent flow.

RESOURCE AREA is equivalent to any area subject to protection under the bylaw.

SIGNIFICANT shall mean to play a role. A resource area is significant to an interest identified in the Bylaw when it plays a role in the provision or protection, as appropriate, of that interest.

STORM DAMAGE PREVENTION shall mean the prevention of damage caused by water from storms including, but not limited to: erosion and sedimentation; damage to vegetation, property or buildings; or damage caused by flooding, waterborne debris or waterborne ice.

STREAM shall mean a body of running water, including brooks and creeks, whether continuous or intermittent, moving in a definite channel in the ground.

SWAMP See definition in the Act, M.G.L. Chapter 131, Section 40, as amended.

TIME PERIODS All time periods of ten days or less referred to in the regulations shall be computed using business days only. In the case of a determination or Order, such period shall commence on the first day after the date of issuance, and shall end at the close of business on the tenth business day thereafter. All other time periods shall be computed on the basis of calendar days, unless the last day falls on a Saturday, Sunday or legal holiday, in which case the last day shall be the next day following.

VERNAL POOL See Section 9 of the Bylaw. Vernal pools whether or not certified by the state shall be considered as a resource area.

WAIVER shall mean an authorization from the Conservation Commission to an applicant for a deviation from the terms of the Bylaw.

WETLAND See the definition of "Freshwater Wetland" in the Act, Chapter 131, Section 40, as amended.

The term "wetland" includes:

- 1) Vegetated wetlands are wet meadows, marshes, swamps and bogs where 50% or more of the vegetative community consists of wetland indicator plants as defined in the Massachusetts Wetlands Protection Act (M.G.L. Ch. 131, s. 40) and regulations at 310 CMR 10.00. When vegetation is not sufficient to determine the boundary of a wetland, characteristics of hydric soils or observations of flowing water, standing water or saturated soils may be used.
- 2) Any non-vegetated area such as a creek, brook, stream, river, pond, lake, lands under said waters, and certified and uncertified vernal pools as defined in the Massachusetts Wetlands Protection Act (M.G.L. Ch. 131, s. 40) and regulations at 310 CMR 10.00 and Section 9 of the Bylaw.

WILDLIFE shall mean all mammals, birds, fish, reptiles, amphibians, and invertebrate animal species including, but not limited to, any state- or federally-listed endangered or threatened species, or species of special concern.

WILDLIFE HABITAT shall mean areas having plant community composition and structure, hydrologic regime, or other characteristics sufficient to provide shelter, nutrient sourcing, growing conditions, nesting or breeding sites conducive to the propagation and preservation of wildlife.

WORK shall mean the same as **ACTIVITY**.

4.0 PROCEDURES

4.1 ACTIONS BY THE CONSERVATION COMMISSION

Where the Bylaw states that a particular action (except receipt of a request or notice) is to be taken by the Commission, that action is to be taken by more than half the members present at the meeting of at least a quorum. A quorum is defined as a majority of the members then in office.

Where the Bylaw states that an order or notification shall be signed by a majority of the Commission, that action is to be taken by a majority of the members then in office, who need not convene as a body in order to sign, provided they met pursuant to the open meeting law, t.l.G.L. c. 39, ss 23A-23C, when voting on the matter.

Where the Bylaw states that the Conservation Commission is to receive a request or notice, Conservation Commission means a member of the Commission or an individual designated by the Commission to receive such request or notice.

4.2 SUBMISSION FOR REQUEST FOR DETERMINATION & NOTICE OF INTENT

In order to insure adequate and proper review by the Commission, staff and the public, all permit application documentation -- including forms, narrative descriptions, plans, maps, tables, charts, reports, etc. for an RDA or an NOI -- must be submitted to the Conservation Commission no later than ten business days prior to the scheduled public hearing, or its continuation. Late submission of material will be interpreted as a request for continuation. The submission shall include sufficient information to enable the Commission to find and view the area and to determine whether the proposed work will alter an area subject to protection under the bylaw. Photographs are appreciated. As much documentation as possible, particularly maps in PDF format, should also be submitted electronically unless the applicant or their representative does not have that ability.

Plan maps must be included for all submissions and show:

- all wetland resources within 100 feet of the activity
- all buffer zones boundary lines (100 foot buffer, 50 foot no-build, 30 foot no-touch)
- lot number, street number, street, Tax Assessor's Map, Block and Parcel/Lot numbers
- erosion/sedimentation control measures & edge of disturbance, if different
- area of disturbance in buffer zone drawn on map and stated as square feet or acres

- individual tree removal within the buffer zone for single family lots. For developments, show the tree overstory line prior to and upon completion of construction, with a notation of the approximate number of trees to be removed.

- location of well and septic system with reserve area
- location of stockpiled materials, if any
- property boundaries, rights-of-way, easements, restrictions

Plans, drawings, sketches and calculations shall be dated and signed by the person(s) responsible for their preparation. Plans and drawings involving the practice of surveying or engineering shall be stamped and signed by the appropriate design professional, who shall be registered in the Commonwealth of MA.

All changes made to an Notice of Intent, Request for Determination of Applicability and/or Abbreviated Notice of Resource Area Delineation applications, whether initiated by the applicant or requested by the Conservation Commission shall be submitted to the Conservation Commission no later than seven calendar days prior to the next scheduled hearing. Late submission of material will be interpreted as a request for continuation.

4.3 REQUEST & FEES FOR DETERMINATION OF APPLICABILITY

Any person who desires to know whether the Bylaw applies to any land or work to be performed thereon must submit a written Request for Determination (RDA) to the Lunenburg Conservation Commission. The request shall be sent by certified mail or hand delivered and shall be in the form required under M.G.L. Ch. 131, s. 40 and 310 CMR 10.00, and shall include such additional information as the Commission may require to aid in the evaluation. If the person making the request is not the owner, certification that the owner has been notified must be included.

Each RDA filing shall be accompanied by a Lunenburg RDA permit filing fee of \$25 for the first 5 acres in the request, and an additional \$25 for each additional 5 acres or part thereof, in addition to those required by the Wetlands Protection Act, MGL C. 131, g 40, and regulations, 310 CMR 10.00. Permit fees are payable at the time of application and are nonrefundable.

4.3.1 Request for Determination of Applicability Public Hearing

Within 21 business days of receipt of the complete request, the Commission shall hold a hearing to consider the application filed under the Bylaw. Notice of the time and place of the public hearing shall be given by the Commission at the expense of the person making the request not less than 5 days prior to such meeting by publication in a newspaper of general circulation in Lunenburg. The applicant shall be responsible to notify all abutters.

Within 21 business days of closing the hearing, the Commission will make its determination. Said determination shall be signed by a majority of the Commission, and copies thereof shall be sent by the Commission to the person making the request and to the property owner. Said determination shall be valid for 3 years from the date of issuance.

4.3.2 Requests for Determination Appeal

The decision of the Commission may be appealed according to the provisions of M.G.L. Ch.249, S.4.

4.4 REQUEST & PROCEDURE FOR NOTICE OF INTENT

4.4.1 Notice of Intent Filing

Any person who proposes to do work that will remove, fill, dredge, build upon, or alter any Protected Resource Area shall submit to the Commission a Notice of Intent (NOI), consisting of application materials required for a Notice of Intent under M.G.L. Ch. 131, s. 40 and 310 CMR 10.00 and containing such additional materials as the Commission may require to fully describe the proposed activity and its effect on the environment.

The Commission may provide written notice of such applications to any Town or other entities as the Commission deems appropriate. If such notice is provided, the Commission shall not take final action until those notified have had 14 business days from receipt of notice to file written comments and recommendations with the Commission, which the Commission shall take into account but which shall not be binding on the Commission. Upon written request the applicant shall receive any comments and recommendations by the above entities and may respond to the Commission in writing or at the hearing.

4.4.2 Notice of Intent Permit Filing Fees

Each permit filing shall be accompanied by a Lunenburg permit filing fee to be determined in accordance with a fee schedule established by the Commission, as follows, and in addition to those required by the Wetlands Protection Act, MGL C. 131, g 40, and regulations, 310 CMR 10.00. Permit fees are payable at the time of application and are nonrefundable.

Town, county, state, and federal projects are exempt from the filing fee.

There is a minimum fee of \$25 for modifications, which may, in the case of minor projects, be waived at the discretion of the Commission.

Agricultural projects are exempt from filing fees.

Schedule of Permit Fees

1. BASIC FEES (non-enforcement order)	
Basic single minor project - e.g., house addition or any other accessory residential activity	\$25 per project
Extensions of residential structure	\$100
New residential structure	\$125
Subdivision - road and utilities permit (lots are separately charged as new residential structure)	\$250
Drainage, detention, & retention basins etc. (each)	\$200
Multiple-dwelling structure	\$300
Commercial, industrial and institutional project, major & additions: any work within the protected resource area.	\$0.003 per sq. foot of work

4.4.3 Insufficient Notice of Intent

If the Notice of Intent is deemed by the Commission to be insufficient to fully describe the proposed activity and its effect on the environment, the Commission may, at its discretion: (a) notify the applicant by certified mail within 10 business days of receipt of the NOI of the additional information that will be necessary to render the NOI sufficiently complete for acceptance. The filing fee shall be returned and the 21-calendar-day review period shall not begin

until a complete application is submitted; or (b) inform the applicant at or prior to the public hearing of the additional information required, and offer the applicant the opportunity to continue the public hearing so that the additional information can be submitted for review.

4.4.4 Notice of Intent Public Hearing

A public hearing shall be held by the Commission within 21 calendar days of the receipt of said NOI. Notice of the time and place of said hearing shall be given by the Commission at the expense of the applicant not less than 5 business days prior to such hearing by publication in a newspaper of general circulation in Lunenburg. The applicant shall be responsible to notify all abutters by certified mail and sent not less than 7 calendar days prior to the scheduled hearing. Such notice will clearly identify the land on which the project is proposed and describe the general nature of the project. Notice shall include the date, place and time of said hearings and where the plans may be reviewed. The Commission may close the hearing but continue deliberations before making a determination.

Public hearings may be continued as follows:

- (a) without the consent of the applicant, to a date certain, announced at the hearing; or
- (b) with the consent of the applicant, to an agreed-upon date, which shall be announced at the hearing.

4.4.5 Notice of Intent Order of Conditions Determination

Within 21 days of the close of the public hearing, or within such further time as the Commission and the applicant shall agree on, the Commission shall either:

- (a) make a determination that the area on which the work is proposed to be done, or which the proposed work will remove, fill, dredge, build upon, or otherwise alter, is not significant to any of the interests identified in the Bylaw, and shall so notify the applicant: or
- (b) make a determination that the area on which the work is proposed to be done, or which the proposed work will remove, fill, dredge, build upon, or otherwise alter, is probably significant to one or more of the interests identified in the Bylaw, and shall issue an Order of Conditions for the protection of said interest(s).

The Order of Conditions shall impose such conditions as are necessary to meet the performance standards set forth in the Performance Standards part of these regulations and such additional conditions as are necessary for the protection of the interests identified in the Bylaw and MGL Ch. 131 S 40. The Order shall prohibit any work or any portion thereof that cannot be conditioned to meet such standards.

The Order may impose conditions on work outside Protected Resource Areas when, in the opinion of the Commission, (1) such work will have a direct impact on a Protected Resource Area by virtue of changes in the characteristics of storm drainage discharged to that Area from the property, or (2) such work is integrally connected with work to be undertaken within a Protected Resource Area and the only practical way to protect the interests of the Bylaw is to regulate the project as a whole.

When the Commission has determined that an activity outside the Areas Subject to Protection Under the Bylaw and outside the Buffer Zone will in fact alter or has in fact altered an Area Subject to Protection Under the By-law, it shall impose such conditions on any portion of

the activity as are necessary to contribute to the protection of the interests identified in the Bylaw.

The Commission shall have the authority to deny any NOI application for which 1) the application is incomplete and the applicant fails to provide the Commission with additional information that the Commission deems necessary in order to evaluate the potential impacts of the proposed project on the wetland values; and/or 2) the proposed work or activity does not meet the performance standards specified herein and cannot be conditioned to meet the performance standards specified herein.

The Order shall be signed by a majority of the Conservation Commission, which can be done at any time prior to the 21st day. The Order shall be valid for a period of three years, provided, however, that the Commission may issue an Order for a minimum of one year or a maximum of five years where special circumstances warrant and where those special circumstances are set forth in the Order.

4.4.6 Notice of Intent Order of Conditions Recording

Prior to the commencement of any work permitted or required by the Order, the Order shall be recorded in the Worcester North District Registry of Deeds or Land Court within the chain of title of the affected property. In the case of recorded land the final order shall also be noted in the Registry's Grantor Index under the name of the owner of the land upon which the proposed work is to be done. In the case of registered land, the final order shall also be noted on the Land Court Certificate of Title of the owner of the land upon which the proposed work is to be done. Certification of recording shall be promptly sent to the Commission. If work is undertaken without the applicant first recording the Order, the issuing authority may revoke the Order of Conditions, may issue an Enforcement Order or may itself record the Order of Conditions at the owner's expense.

The Commission administrator must be notified in writing 48 hours prior to the commencement of any site work and erosion control installation for the scheduling of inspection.

4.4.7 Notice of Intent Appeals

Any person aggrieved by the decision of the Commission, whether or not previously a party to the proceeding, may appeal the decision according to the provisions of M.G.L. Ch. 249, s.4.

4.4.8 Notice of Intent Extensions

The Commission may extend an Order for up to 3 years. The request for an extension shall be made to the Commission in writing at least 30 days prior to expiration of the Order.

The Commission may deny the request for an extension and require the filing of a new Notice of Intent for the remaining work in the following circumstances:

(a) where no work has begun on the project within a period of 3 years from the date of issuance of the Order, except where such failure is due to unavoidable delays, such as appeals, in the obtaining of other necessary permits;

(b) where new information, not available at the time the Order was issued, has become available and indicates that the Order is not adequate to protect the interests identified

in the Bylaw;

- (c) where incomplete work is causing damage to the interests identified in the Bylaw;
- (d) where work has been done in violation of the Order or these regulations; or
- (e) where regulations have changed.

The Extension Permit shall be recorded in the Land Court or the Registry of Deeds, whichever is appropriate, and certification of recording shall be promptly sent to the Commission. If work is undertaken without the applicant so recording the Extension Permit, the Commission may issue an Enforcement Order or may itself record the Extension Permit at the owner's expense.

4.4.9 Notice of Intent Certificates of Compliance Issuance

Upon written request by the applicant, the Commission shall issue a Certificate of Compliance within 21 calendar days of receipt thereof provided that the activity or portions thereof described in the Notice of Intent and accompanying plans have been completed in compliance with the Order. If a project has been completed in accordance with plans stamped by a registered professional engineer, a written statement by such a professional person certifying substantial compliance with the plans and setting forth what deviations if any, exists from the plans approved in the Order shall accompany the request for a Certificate of Compliance.

Prior to the issuance of a Certificate of Compliance, a site inspection shall be made by the Commission and/or its agent. If requested by the applicant, the site inspection shall be performed in the presence of the applicant or the applicant's agent.

If the Commission determines, after a review and inspection, that the work has not been done in compliance with the Order, it may refuse to issue a Certificate of Compliance. Such refusal shall be issued within 21 days of receipt of the request, shall be in writing, and shall specify the reasons for denial.

If the final Order contains conditions which continue past the completion of the work, such as maintenance or monitoring, the Certificate of Compliance shall specify which, if any, of such conditions shall continue. The Certificate shall also specify to what portions of the work it applies to, if it does not apply to all the work regulated by the Order.

The Certificate of Compliance shall be recorded in the Land Court or Registry of Deeds, whichever is appropriate. Certification of recording shall be promptly sent to the Commission. Upon failure of the applicant to so record, the Commission may do so at the applicant's expense.

4.4.10 Abbreviated Notice of Resource Area Delineation

Any person requesting approval of a resource area delineation shall submit to the Commission an Abbreviated Notice of Resource Area Delineation consisting of application materials required for an Abbreviated Notice of Resource Area Delineation under M.G.L. Ch. 131, s.40 and 310 CMR 10.00 and containing such additional materials as the Commission may require to fully describe the resource areas on site and within 100 feet of the subject property. Each such notice shall be accompanied by a filing fee to be

determined in accordance with a fee schedule established by the Commission.

A public hearing shall be held by the Commission within 21 days of the receipt of said Notice. Notice of the time and place of said hearing shall be given by the Commission at the expense of the applicant not less than 5 days prior to such hearing by publication in a newspaper of general circulation in Lunenburg. The applicant shall be responsible to notify all abutters by certified mail.

When considering an Abbreviated Notice of Resource Area Delineation during adverse weather conditions, it shall be left to the discretion of the Conservation Commission and/or their agent as to whether field conditions are conducive to an accurate verification of the resource area delineation.

Within 21 days of closing the hearing, said determination shall be signed by a majority of the Commission, and copies thereof shall be sent by the Commission to the person making the request and to the owner. Said determination shall be valid for 3 years from the date of issuance.

The decision of the Commission may be appealed according to the provisions of M.G.L. Ch.249,S.4.

5.0 ENFORCEMENT ACTIONS AND FINES

When the Commission or its agent has determined that an activity has occurred or is occurring in violation of any provision of the Bylaw, the regulations promulgated under it, or any conditions of a valid Order of Conditions, the Commission or its agent may issue an Enforcement Order or a Violation Notice. Violations shall be punished by a fine of not more than \$300. Each day or portion thereof of continuing violation shall constitute a separate offense. The Bylaw, these regulations, and all Orders of Conditions may be enforced by the Commission and its designees.

Additional fines and fees are according to the schedule below and are payable to the Town of Lunenburg for the Conservation Commission within 21 days. The Town Clerk may record in the Registry of Deeds a conservation lien, equaling the decision of the Conservation Commission at the administrative hearing, against all property in the Town of Lunenburg held by the property owner at the time of the violation.

Members and agent of the Commission may lawfully enter upon privately owned land for the purpose of performing their duties under the Bylaw and these rules and regulations.

Persons subject to fines for violations and enforcement orders may include property owners and contractors and other agents of such property owner.

5.1 VIOLATION LETTER

A Violation Notice is a letter sent to the property owner, contractor, or agent requesting them to stop the activity and to appear before the Commission for an administrative hearing to determine if fines are warranted, and informing them of the fees and fine schedule. The Conservation Administrator is authorized to send the letter upon verbal approval by the

Commission Chair or Vice-chair. The notice will be mailed at least 48 hours prior to the hearing by certified mail or by hand. If the property owner requests a continuance in writing, the Commission may grant it provided that the reasons are compelling.

At the administrative hearing, the Commission will discuss the violation and provide the person an opportunity to respond to the evidence and the circumstances. If a majority of the Commission finds by the preponderance of the evidence that a violation has occurred, the amount of the fine will be determined by the Commission at the hearing. The Commission reserves the right to adjust the fine in response to new information or circumstances at an administrative hearing to which the property owner will be given notice as above.

5.2 ENFORCEMENT ORDER

An Enforcement Order is a legal document and may be used if the violations are significant and may be enforced by the DEP for WPA violations, but does not preclude a Violation Notice. An Enforcement Order issued by the Commission shall be signed by a majority of the Commission. In a situation requiring immediate action, an Enforcement Order may be signed by a single member or agent of the Commission, provided said Order is ratified by a majority of the members at the next scheduled meeting of the Commission.

The Violations include, but are not limited to:

- failure to comply with a final Order, such as failure to observe a particular condition or time period specified in the Order;
- failure to complete work described in a final Order, when such failure causes damage to the interests identified in the Bylaw; or
- failure to obtain a valid Order of Conditions or Extension Permit prior to conducting an activity subject to regulation under the Bylaw.

5.3 VIOLATION AND ENFORCEMENT ORDER FEES & FINES

VIOLATION AND ENFORCEMENT ORDER FEES & FINES	
Application fee for filing NOI after any violation is double the standard filing fees	2 times the standard fees
PLUS Advertising Fee	\$40
PLUS Bylaw Fee	\$25
PLUS Inspection & Office Fees	\$100
PLUS Lift Order Fee when site is satisfactory	\$150
PLUS Each “No-Show” at hearing	\$100
PLUS daily offense fine	\$300/day

6.0 CHANGES IN SUBMITTED PLANS

If, at any time after a Determination of Applicability or Order of Conditions has been issued, there is a change in the proposed activity, the person on whose behalf the work is being done, in the case of a Determination, or the applicant, in the case of an Order, must notify the Commission, in writing, of the proposed changes. No work associated with these changes shall be done on the subject area until the Commission has reviewed the changes and issued its decision.

The Commission shall review these changes and determine one of the following:

1. The changes represent a substantial departure from the original proposal and the potential impacts of the new proposal on the interests identified in the Bylaw are sufficiently different from those of the original proposal as to require the filing of a new Request for Determination or Notice of Intent, or
2. The changes involve a substantial departure from the original proposal in only limited respects, as determined by the Commission, and the Commission will consider amending the original Determination or Order following submission of information on the proposed changes and their potential impacts on the interests identified in the Bylaw and following a public meeting or hearing and notice as required in above; or
3. The changes represent an insignificant change in the original proposal and will cause no significant difference in the impact of the activity on the interests identified in the Bylaw, in which case the person proposing these changes may proceed in conformance with them.

The person making this request shall be notified by the Commission of its decision within 21 days of receipt of the request.

7.0 SECURITY

The Commission may require, as a permit condition, that the performance and observance of the Order of Conditions be secured by one or both of the following methods:

7.1 BOND

By a bond or deposit of money or negotiable securities in an amount and form determined by the Commission to be sufficient to secure the completion of all conservation measures specified in their Order of Conditions: and, the Commission may require that the applicant specify the time within which such construction shall be completed.

The penal sum of any such bond shall bear a direct and reasonable relationship to the expected costs, including the effects of inflation, necessary to complete the sub-work. Such amount or amounts shall be from time to time reduced as is, in the determination of the Commission, necessary to reflect the actual expected costs of the work remaining to be completed.

7.2 COVENANT

By a covenant, executed and duly recorded by the owner of record, running with the land whereby such conservation measures, as are stated in the Order of Conditions, shall be provided before any lot may be built upon or conveyed.

The deposit of monies, negotiable securities, bond or covenant shall, in the case of the bond be given to the Town Treasurer, and in the case of a covenant, be recorded in the Registry of Deeds or Land Court, as the case may be, within 14 days of the granting of the Order of Conditions.

8.0 WAIVER OF REGULATIONS

Strict compliance with these regulations may be waived when, in the judgement of the Commission, such action would serve a substantial public interest or when strict compliance would result in the following, but not limited to, severe economic, physical, legal, contextual hardship far greater in magnitude than the public interest to be served. In the latter case, the Commission may require that compensatory or mitigating measures be taken, even at an offsite location, to protect the public interest in the Protected Resource Area to be removed, filled, dredged, built upon, or altered.

9.0 SEVERABILITY

If any provision of any part of these rules and regulations or the application thereof is held to be invalid, such invalidity shall not affect any other provision of these rules and regulations.

10.0 PERFORMANCE STANDARDS

The performance standard regulations apply to all work which will remove, fill, dredge or alter any Bank, Freshwater Wetland (any bog, any kettle hole, any seasonal wetland, any swamp, or any wet meadow bordering or not bordering on a river, stream, lake or pond), land under water bodies and waterways or land subject to flooding. These regulations are in addition to the preceding procedural regulations.

10.1 INCORPORATION OF STATE STANDARDS

Applicants seeking approval under the Bylaw must meet all applicable state Wetland Protection Act standards. The introduction, purpose and performance standards stated in the WPA Regulations 310 CMR 10.51 - 10.60 shall apply. In addition, the Commission finds that protection of the interests identified in the Bylaw requires that applicants also meet the following additional standards. Failure to meet these standards will result in the Commission's denial of an application.

10.2 STORMWATER MANAGEMENT

Any proposed work in a Protected Resource Area and any proposed work that involves a new storm drain system or connection to an existing storm drain system that discharges to a Protected Resource Area, shall not result in an increase in the peak rate of surface runoff during either a 2-year, 10-year or 100-year storm event to areas beyond the boundaries of the property on which the activity is to be conducted. All filings involving a new storm drain system or connection to an existing storm drain system shall provide the Commission with a detailed stormwater pollution prevention plan for during construction, as well as, for long-term maintenance of the stormwater system. This plan shall specify detailed construction methods for erosion control, identify responsible parties and shall include a signed affidavit that all conditions of the pollution prevention plan shall be met. The discharge of any substances in to the storm drain system, other than stormwater, is strictly prohibited.

10.3 STRUCTURES IN FLOODPLAIN

No building of any kind, or impervious surfaces or any other facility for the temporary or permanent storage of automobiles, trucks, or other material shall be located below the 100-year flood level without a valid Order of Conditions from the Conservation Commission.

10.4 WILDLIFE HABITAT IMPACT AND MITIGATION

On any application for the approval of a project involving the disturbance of more than 20,000 square feet within a Protected Resource Area, the Commission may require (a) an analysis, by a competent wildlife biologist, of (1) the habitat value of the parcel of land to be disturbed and of the adjacent area, and (2) the impact of the proposed development on wildlife populations and habitat value, and (b) proposed measures to be taken during construction and during operation to mitigate these impacts.

An evaluation by the applicant of whether a proposed project will have an adverse effect on wildlife habitat beyond the permissible thresholds shall be performed by an individual with at least a masters degree in wildlife biologist or ecological science from an accredited college or university, or other competent professional with at least two years experience in wildlife habitat evaluation.

10.5 BUFFER ZONES

Within 30 feet of a resource area, the Commission does not allow any disturbance of the land. Minor pruning or cutting of limbs, hand dug tree planting, and hand dug fencing is allowed with approval of the Conservation Commission.

Within 50 feet of a resource area, the Commission does not allow building of new structures, retaining walls, or impervious surfaces. Additions to or reconstruction of existing structures within 50 feet of a resource area shall be reviewed on a case by case basis.

Properties with existing structures that are currently not in compliance with the above will not be permitted to increase their degree of non-conformance. Existing disturbance or reconstruction within 30 feet of a resource area shall be reviewed on a case by case basis.

10.6 LIMITED PROJECT PERMITS

The Conservation Commission may issue an Order of Conditions permitting limited purposes as defined below, and provided they are carried out in accordance with the following general conditions and any additional conditions deemed necessary by the Conservation Commission. Limited project status applies to Agricultural Work and Forestry Work only for initial conversion prior to exempt status.

10.6.1 Agricultural Work Definition

Work on land including the maintenance, improvement or expansion of land used primarily and directly in the raising of animals, including but not limited to dairy cattle, beef cattle, poultry, sheep, swine, horses, ponies, mules, goats, bees, alpacas, lamas, camels and any other fur bearing animals or on land to be used in a related manner which is incidental thereto and represents a customary and necessary use in raising such animals; and work on land to be used primarily and directly in the raising of fruits, vegetables, berries, nuts, and other foods for human consumption, feed for animals, flowers, sod, trees and nursery or greenhouse products; or on land to be used in a related manner which is incidental thereto and represents a customary and necessary use in raising such products.

10.6.2 Forestry Work Definition

Work on land to be used primarily and directly in the raising of forest products under a planned program to improve the quantity and quality of a continuous crop or on land to be used

in a related manner which is incidental thereto and represents a customary and necessary use in raising such products.

10.6.3 Required Conditions for Agriculture and Forestry Work

a. There shall occur no change in the existing topography or the existing soil and surface water levels of the area.

b. All fertilizers, pesticides, herbicides and other such materials shall be used in accordance with all applicable state and federal laws and regulations governing their use, and shall not occur within 30 feet of the wetland.

c. All activities shall be undertaken in such a manner as to prevent erosion and siltation of adjacent wetlands and water bodies as specified by the U.S.D.A. Soil Conservation Service, "Guidelines for Soil and Water Conservation".

d. All streams, rivers, ponds and lakes shall be protected by a 30 foot wide protective buffer of naturally occurring plant material, except where this would be absolutely impractical.

e. For forestry work, there shall occur no cutting of trees or other vegetation within 30 feet of any streams, rivers, lakes or ponds, except where a stream or river crossing is necessary to build a temporary access road, and the placement of slash, branches and limbs shall not occur within 30 feet of the bank of any protected resource area.

10.6.4 Utilities

The construction, reconstruction, operation and maintenance of underground and overhead public utilities such as electrical distribution or transmission lines, or communication, sewer, water or natural gas lines, may be permitted, in accordance with the following general conditions and any additional conditions deemed necessary by the Conservation Commission.

a. The Commission may require a reasonable alternative route with fewer adverse effects for a local distribution or connecting line not reviewed by the Energy Facilities Siting Council

b. Best available measures shall be used to minimize adverse effects during construction.

c. The surface vegetation and contours of the area shall be substantially restored

d. Applications of herbicides shall not occur within 30 feet of a wetland or water body during maintenance of the line.

e. All sewer lines shall be constructed to prevent inflow and leakage.

10.6.5 New Roadway/Driveway

The construction and maintenance of a new roadway or driveway of minimum legal and practical width acceptable to the planning board, where reasonable alternative means of access from a public way to an upland area is otherwise unavailable will be considered. In determining whether reasonable alternative means of access are available, the Commission may consider the reasonableness of any available alternatives, including the realignment or reconfiguration of the project to minimize disruption of the wetlands on the site. The minimum project exemption does not contemplate maximum development of uplands at the expense of wetlands, which would result from locating access ways in wetland areas to the greatest extent possible.

Such roadway or driveway shall be constructed using the best available practices to minimize disturbance and maximize compliance with the applicable performance standards. In addition, such roadway or driveway shall be constructed in a manner which does not adversely restrict the flow of surface or subsurface water and so that equivalent flood storage is maintained.

In addition the Conservation Commission reserves the right to regulate the use of paving materials including but not necessarily limited to asphalts, oil and stone, and other surfacing products where the limited project access road passes through sensitive wetland areas. The Commission also reserves the right to regulate the use of de-icing agents such as road salts, on limited project access roads.

10.6.6 Maintenance and improvement of existing public roadways

These shall be limited to widening less than a single lane, adding shoulders and correcting substandard intersections.

10.6.7 Impoundments

The excavation of wildlife impoundments, farm ponds and ponds for fire protection uses are allowed provided that no fill or other material is placed upon the wetland except as may be necessary to construct said impoundments or ponds, to provide access thereto, and to provide bank stabilization, with the permission of the Conservation Commission and under any Orders of Condition set thereto.

10.6.8 Beaches/Ramps/Water Structures

The following are limited waterfront projects for which the Conservation Commission may issue an Order of Conditions to protect the interests in the Bylaw:

- a. Maintenance of beaches and boat launching ramps which existed on the effective date of these regulations.
- b. Maintenance, repair and improvement (but not substantial enlargement) of structures, including buildings, piers, towers, and headwalls which existed on the effective date of these regulations.
- c. Construction and maintenance of catwalks, footbridges, docks, boathouses, boat shelters, duck blinds, and observation decks; provided, however, that such structures are constructed on pilings or posts so as to permit the reasonably unobstructed flowage of water, minimal damage to pre-existing banks and adequate light to maintain vegetation.

10.6.9 Routine Road Maintenance

The routine maintenance and repair of road drainage structures including culverts and catch basins, drainage easements, ditches, water courses, and artificial water conveyances to insure flow capacities which existed on the effective date of these regulations.

10.6.10 Stream Crossings

The construction of bridges over streams when all Army Corps of Engineers s 404 permits have been issued and the following requirements are met:

- a. Stream crossing construction is performed during low water periods in the late summer, fall and winter months. (July 1 - March 1).
- b. At all times, all areas within 100 feet of the stream crossing which are disturbed, or have vegetation removed, shall be covered with hay mulch, or similar material to prevent erosion and siltation. In areas of heavy activity, mulch may need to be spread each day.
- c. Construction workers and machinery shall not work in the stream, except where absolutely essential to complete construction activities.

d. Silt fences and hay bale/filter sock/baffle dikes are placed to keep silt from the construction area from reaching the stream.

e. Immediately upon the completion of the stream crossing, all bankings are to be stabilized with mesh netting or other suitable material. Restoration of 'critical edge' through replanting shrubs and trees within 30 feet of the bank of the stream shall be accomplished within a reasonable time.

10.6.11 Vegetation Removal

The Conservation Commission may issue an Order of Conditions for projects which will improve the natural capacity of resource area(s) to protect the interests identified in the Bylaw. Such projects include, but are not limited to, the removal of aquatic nuisance vegetation to retard pond and lake eutrophication and the thinning or planting of vegetation to improve habitat value. For vegetation removal using herbicides, all Board of Health permits must be obtained before an Order of Conditions is issued.

Although the Commission may issue an Order of Conditions permitting the removal of aquatic nuisance vegetation, it is recommended that home owners around ponds and lakes affected by accelerated eutrophication adopt a program to reduce the use of detergents and soaps with high phosphate contents within individual homes in an attempt to curb the problem at its source.

11.0 EFFECTIVE DATE

These rules and regulations shall take effect upon adoption and shall apply to all applications filed on or after that date and any procedures or work conducted pursuant to such filings. They shall not apply to any application for which was filed prior to said effective date.

(Adopted by vote of the Commission on March 5, 2014)

Appendix I
Additional Special Order of Conditions Template

These special conditions are for the Commission's consideration. They may be modified, deleted or added to as the requirements are determined for each project.

1. An Order of Conditions for roadways and drainage does not constitute approval of house lot lines on the plan. Each lot must be individually reviewed.
2. Disturbances in the buffer zone will be loamed and seeded immediately after grading is done to stabilize and minimize erosion.
3. At the completion of the project all silt fence, hay bales, stakes and strings or wires, baffles and other construction erosion control materials not listed in WPA Form 5 must be removed.
4. The following special Order of Conditions will extend beyond the issuance of a Certificate of Compliance, in perpetuity:
 - a. The 30 foot no-touch line will be indicated by conservation markers anchored to trees or posts, located at least 3 feet above ground level. The markers are approximately 4 inches in diameter. They will be spaced between 30 and 50 feet apart, so as to provide a visible line of sight along the buffer, and at minimum one per lot. The Conservation Commission will determine specific locations based on the project. The markers are available at cost from the Conservation Commission, which may replace or add markers at its discretion in perpetuity under the Enforcement provisions. The markers indicate "Do Not Disturb", and shall be permanently left in place. This condition shall remain in perpetuity inclusive of the transfer of ownership of the subject property. Aluminum nails, leaving a space of 1/4" from the bark, will be used for markers attached to trees.
 - b. Fertilizers utilized for landscaping and lawn care shall be organic and of low-nitrogen content, and shall be used in moderation. No spraying of herbicides or pesticides shall occur within 100 feet of the wetlands in perpetuity.
 - c. There shall be no yard waste, manure, or debris (including, but not limited to, leaves, grass clippings, slash, tree limbs, trash, vegetation, or fill) deposited in the resource area nor stockpiled in the 100-foot Buffer Zone of a resource area.